

No. 13135

---

United States  
Court of Appeals  
for the Ninth Circuit.

---

WATERMAN STEAMSHIP CORPORATION, a  
Corporation,

Appellant,

vs.

SHIPOWNERS & MERCHANTS TOWBOAT,  
CO., LTD., a Corporation, and Tug SEA  
FOX, INC., a Corporation, on Their Own Be-  
half and on Behalf of the Master, Officers and  
Crew of the Tug Sea Fox,

Appellees.

---

Supplemental  
Apostles on Appeal

---

Appeal from the United States District Court for the  
Northern District of California,  
Southern Division.

FILED

JAN - 9 1952

---

PAUL P. O'BRIEN  
CLERK



No. 13135

---

**United States  
Court of Appeals**  
for the Ninth Circuit.

---

**WATERMAN STEAMSHIP CORPORATION, a  
Corporation,**

**Appellant,**

**vs.**

**SHIPOWNERS & MERCHANTS TOWBOAT,  
CO., LTD., a Corporation, and Tug SEA  
FOX, INC., a Corporation, on Their Own Be-  
half and on Behalf of the Master, Officers and  
Crew of the Tug Sea Fox,**

**Appellees.**

---

**Supplemental  
Apostles on Appeal**

---

**Appeal from the United States District Court for the  
Northern District of California,  
Southern Division.**



## INDEX

---

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

	PAGE
Answers to Interrogatories Propounded to Cross-Libelant .....	381
Answers of Respondent and Cross-Libelant to Interrogatories Propounded by Libelants and Cross-Respondent .....	378
Exhibits, Respondents:	
F—Deposition of Captain F. G. Eastman.	386
G—Deposition of Lt. Frank C. Schmitz...	406



In the Southern Division of the United States  
District Court for the Northern District of  
California

SHIPOWNERS & MERCHANTS TOWBOAT  
CO., LTD., a Corporation, on Its Own Behalf  
and on Behalf of the Master, Officers and Crew  
of the Tug SEA FOX,

Libelants,

vs.

WATERMAN STEAMSHIP CORPORATION, a  
Corporation,

Respondents

In Admiralty—No. 25539-E

WATERMAN STEAMSHIP CORPORATION, a  
Corporation,

Cross-Libelant,

vs.

SHIPOWNERS & MERCHANTS TOWBOAT  
CO., LTD., a Corporation,

Cross-Respondent.

ANSWERS OF RESPONDENT AND CROSS-  
LIBELANT WATERMAN STEAMSHIP  
CORPORATION TO INTERROGATORIES  
PROPOUNDED BY LIBELANTS AND  
CROSS-RESPONDENT

Now Comes the respondent and cross-libelant Waterman Steamship Corporation, a corporation, by and through its proctors, Clarence G. Morse and Graham & Morse, and answers the interrogatories propounded by libelants and cross-respondents, Shipowners & Merchants Towboat Co., Ltd., a corporation, as follows:

Interrogatory 1.

Answer: (a) The towing wire transferred to the Sea Fox from the Sea Prince was used and defective.

(b) The towing engine of the Sea Fox was unseaworthy and defective.

(c) The Sea Fox was insufficiently powered for towage of the Herald of the Morning for that season and area.

Interrogatory 2.

Answer: (a) They failed to navigate in a manner to keep the Herald of the Morning astern of the Sea Fox but permitted the tow to yaw from side to side.



(b) In failing to keep in touch with the Weather Bureau to check on weather forecasts of approaching weather.

(c) In failing to put into a port of refuge when the weather began to worsen.

(d) In failing to call for assistance when, off the Columbia River, they realized they could not handle the Herald of the Morning alone in even moderately heavy weather.

(e) In failing to regularly slacken off on the towing wire in order to minimize wear and tear on the wire.

(f) In failing to have aboard the Sea Fox personnel who were experienced in towing large dead ships at sea.

Interrogatory 3.

Answer: Libelant.

Interrogatory 4.

Answer: The Neptune was negligent in maneuvering in that she should have come to the bow of the Herald of the Morning from forward of and to the lee side of the stem of the Herald of the Morning and in permitting the Neptune to ride too close to the stem of the Herald of the Morning.

Interrogatory 5.

Answer: Yes.

## Interrogatory 6.

Answer: Waterman Steamship Corporation and during the tow Pacific Car & Foundry Company.

## Interrogatory 7.

Answer: Yes, but only as provided in said survey report.

GRAHAM & MORSE,  
/s/ CLARENCE G. MORSE,

Proctors for Respondent and  
Cross-Libelant.

Receipt of a copy of the foregoing Answers to Interrogatories acknowledged.

State of California,  
City and County of San Francisco—ss.

Fred J. Foster, being first duly sworn, deposes and says:

That he is an officer, to wit, Assistant Secretary, of Sudden & Christenson, Inc., duly authorized agent of Waterman Steamship Corporation, respondent and cross-libelant in the above-captioned matter, and as such is authorized and empowered to make and subscribe oaths sworn on behalf of respondent and cross-libelant; that he has read the

foregoing answers to interrogatories, knows the contents thereof, and that the same are true to the best of his knowledge, information and belief.

/s/ FRED J. FOSTER.

Subscribed and sworn to before me this 16th day of May, 1950.

[Seal] /s/ LUCIE M. REINCKE,

Notary Public in and for the City and County of San Francisco, State of California.

My Commission expires November 19, 1950.

[Endorsed]: Filed May 17, 1950.

---

[Title of District Court and Cause.]

ANSWERS TO INTERROGATORIES  
PROPOUNDED TO CROSS-LIBELANT

1. Addendum dated November 1, 1948, to Policy No. 48-1299, American Marine Hull Insurance Syndicate, provided in part:

It is further agreed the trip in tow rates are as follows:

Marine— $1\frac{1}{8}\%$  (with release of tug)

1% (no release of tug)

War and strikes, etc.,  $2\frac{1}{2}\%$ .

All other terms and conditions remaining unchanged.

2. Premium of  $1\frac{1}{8}\%$  was paid to the insurers for the voyage in tow from "present location within

San Francisco Harbor limits to Everett Pacific Shipbuilding and Drydock Company, Everett, Washington.”

3. No answer required.

4. Contract No. MCc 61461 dated as of October 26, 1948, between United States Maritime Commission (therein called “Commission”), Pacific Car & Foundry Company doing business as Everett Pacific Shipbuilding and Drydock Company (therein called “Contractor”), and Waterman Steamship Corporation (therein called “Owner”), provided in part:

“Article 25: Liability. (a) In the event the work to be performed by the Contractor hereunder is such that delivery of the vessel will be made to the Contractor at the Shipyard, the Contractor shall be liable to the Owner for any damage or loss to the vessel, its machinery, supplies, apparel, and appurtenances or materials, equipment and supplies furnished by the Owner, occurring during the performance of the work covered hereby and resulting from the negligence of the Contractor, its servants, subcontractors, agents, or employees, which liability shall be limited to the sum of \$300,000.00.

“(b) In the event the work to be performed by the Contractor hereunder includes transfer of the vessel by or on behalf of the Contractor to the Shipyard, the Contractor shall be liable to the Owner for any damage or loss to the vessel, its machinery, supplies, apparel, and

appurtenances or material, equipment and supplies furnished by the Owner, occurring during the performance of the work covered hereby and resulting from negligence of the Contractor, its servants, subcontractors, agents or employees, which liability shall be limited to the sum of \$300,000.00, provided however, that the Contractor shall not be liable to the Owner for any damage or loss to the vessel, its machinery, supplies, apparel, and appurtenances, or materials, equipment and supplies furnished by the Owner, resulting from the negligence of the Contractor, its servants, subcontractors, agents, or employees and occurring during the transfer of the vessel to the Shipyard by or on behalf of the Contractor from the point of original delivery of the vessel to the Contractor.”

5. The towage contract between Shipowners & Merchants Towboat Co., Ltd., and Everett Pacific Shipbuilding & Drydock Company, dated November 1, 1948, provided:

“By endorsement thereon or otherwise and without any right of subrogation against it, First Party shall be made an additional assured in Second Party’s insurance policies covering the tow, including Hull P & I and Cargo, during the towage service, and, if Second Party does not so add First Party as an additional assured or fails to provide for the aforesaid waiver of subrogation or fails to insure said tow, then Second Party agrees to be the insurer

thereof for both parties and expressly agrees to assume the risk of loss of or damage to the tow and cargo and any liability of First Party therefor which could be covered by usual and suitable forms of marine insurance policies.”

6. No. The understanding reached was between Waterman and the U. S. Maritime Commission which required Waterman to cover insurance during movement of the vessel by Pacific Car & Foundry Company, who was to be named as co-insured, and the allowance against the purchase price for Waterman’s expenses was revised to include the insurance costs.

7. Waterman has no knowledge but is advised by underwriters they did not sight the towage contract before voyage began.

8. Pertinent particulars of towage arrangements and contract were furnished by Waterman to its brokers, who arranged the insurance. Waterman has no knowledge of what transpired between the brokers and the underwriters.

GRAHAM & MORSE,  
/s/ CLARENCE G. MORSE,

Proctors for Respondent and Cross-Libellant,  
Waterman Steamship Corporation.

Receipt of a copy of the foregoing Answers to Interrogatories acknowledged.



State of California,  
City and County of San Francisco—ss.

Clarence G. Morse, being first duly sworn, deposes and says:

That he is of counsel for Respondent and Cross-Libellant, Waterman Steamship Corporation, in the above-captioned matter; that there are no officers of the said Respondent and Cross-Libellant within this District, and therefore he makes this affidavit on its behalf; that he has read the foregoing Answers to Interrogatories, knows the contents thereof, and that the same are true to the best of his knowledge, information and belief.

/s/ CLARENCE G. MORSE.

Subscribed and sworn to before me this 16th day of January, 1951.

[Seal]      /s/ HELEN E. WALSH,  
Notary Public in and for the City & County of  
San Francisco, State of California.

My Commission expires October 22, 1954.

[Endorsed]: Filed January 22, 1951.

## RESPONDENT'S EXHIBIT F

In the Southern District of the United States District Court for the Northern District of California

In Admiralty No. 25538-H

PUGET SOUND TUG & BARGE COMPANY, a Corporation, and CARY-DAVIS TUG & BARGE COMPANY, a Corporation,

Libelants,

vs.

WATERMAN STEAMSHIP CORPORATION, a Corporation,

Respondent,

vs.

SHIPOWNERS & MERCHANTS TOWBOAT CO., LTD.,

Third Party Respondent.

and

In Admiralty No. 25539-E

SHIPOWNERS & MERCHANTS TOWBOAT CO., LTD., a Corporation, on Its Own Behalf and on Behalf of the Master, Officers and Crew of the Tug SEA FOX,

Libelants,

vs.

WATERMAN STEAMSHIP CORPORATION, a Corporation,

Respondent,



Respondent's Exhibit F—(Continued)

WATERMAN STEAMSHIP CORPORATION, a  
Corporation,

Cross-Libelant,

vs.

SHIPOWNERS & MERCHANTS TOWBOAT  
CO., LTD., a Corporation,

Cross-Libelant.

Thursday, November 30, 1950—10 A.M.

Appearances:

EUGENE S. GILLIGAN, ESQ.,

120 Broadway, New York, New York,

Of Counsel.

GRAHAM and MORSE,

Counsel,

Appearing for the Waterman Steam-  
ship Corporation.

FREDERIC CONGER, ESQ., of

BURLINGHAM, VEEDER, CLARK AND  
HOPPER,

27 William Street, New York, New York,  
Of Counsel.

McKEON and COLBY,

Counsel,

Appearing for Puget Sound Tug &  
Barge Company and Shipowners &  
Merchants Towboat Co.

## Respondent's Exhibit F—(Continued)

Deposition of Captain F. G. Eastman, U. S. C. G., a witness of lawful age, taken on behalf of Waterman Steamship Corporation, in the above-entitled causes pending in the Southern District of the United States District Court for the Northern District of California, pursuant to agreement, before Esther M. Midthun, a notary public in and for the District of Columbia, in Room 327 Munsey Building, Washington, D. C., on the 30th day of November, 1950.

Mr. Gilligan: Counsel enter the same stipulation as made between them on the deposition of Lieutenant Frank C. Schmitz, at Groton, Connecticut. [2\*]

## CAPTAIN F. G. EASTMAN, U. S. C. G.

a witness called in behalf of Waterman Steamship Corporation, being of lawful age, and being first duly sworn by the notary public in the above causes, testified on his oath as follows:

## Direct Examination

By Mr. Gilligan:

Q. On November 17, 18, and 19, 1948, were you Commanding Officer of the United States Coast Guard Cutter Winona? A. Yes, I was.

Q. What was your rank then?

A. I was a Commander then.

Q. What is your present rank and duty?

Respondent's Exhibit F—(Continued)

(Deposition of Captain F. G. Eastman.)

A. Rank: Captain, assigned to Coast Guard Headquarters, Washington, D. C.

Q. What is your place of residence?

A. 1514 Timber Lane, Falls Church, Virginia.

Q. In November, 1948, about what length sea service had you had then?

A. I had had a total of about 20 years' service, about 14 of which was sea service.

Q. On the dates I mentioned, did the Winona render assistance to the Herald of the Morning and the Tug Sea Fox?      A. Yes.

Q. In instances where a Coast Guard vessel renders assistance, is there any practice in connection with making [3] reports on such assistance?

A. Yes, we always make a report of assistance, Form NCG-2628, to headquarters.

Q. In this instance, did you make a report of assistance to Coast Guard Headquarters?

A. Yes.

Q. I show you a photostatic sheet and ask if you can identify it.

A. Yes. This is a report of the assistance of the Coast Guard Cutter Winona in the Herald of the Morning case.

Q. Is that report signed by you?

A. Yes, it is.

Mr. Gilligan: I offer the report in evidence and request that it be marked Exhibit Winona "A."

Mr. Conger: I object to its introduction.

## Respondent's Exhibit F—(Continued)

(Deposition of Captain F. G. Eastman.)

(The photostatic copy of report of assistance of the Coast Guard Cutter Winona in the Herald of the Morning case, marked Winona Exhibit "A," was retained in possession of counsel.)

Q. (By Mr. Gilligan): Can you identify the four photostatic sheets which I hand you?

A. Yes. This is the photostatic copy of the official log of the Winona for the 17th and 18th of November, 1948.

Q. It also covers the 19th, does it not?

A. 17th, 18th, and 19th of November, 1948. [4]

Q. And that official log is one that was kept in the regular operation of the cutter?

A. Yes, it is.

Mr. Gilligan: I offer the four log sheets in evidence and request that they be marked Exhibits Winona B-1 to B-4.

Mr. Conger: I object to the introduction in evidence of these logs.

(The photostatic copies of four log sheets of the Winona for November 17, 18, and 19, 1948, marked Winona Exhibits B-1, B-2, B-3, and B-4, respectively, were retained in possession of counsel.)

Q. (By Mr. Gilligan): What type vessel was the Winona?

A. The Winona is a cruising cutter 255 feet long with 4,000 horsepower.

Respondent's Exhibit F—(Continued)

(Deposition of Captain F. G. Eastman.)

Q. Was she single screw or twin screw?

A. Single screw.

Q. Did you proceed to the scene of the *Herald of the Morning* in response to dispatches from Coast Guard Headquarters?

A. Yes. Orders were issued to us from the 13th Coast Guard District in Seattle to proceed to the *Herald of the Morning* and assist the *Balsam* as necessary.

Q. You at the time were en route from where and bound where?

A. The *Winona* was en route from Port Angeles, Washington, [5] to an ocean station, Fox, which was half way between San Francisco and Honolulu.

Q. What time did you arrive at the scene of the *Herald of the Morning*?

A. We arrived at the scene at 0428 on the 17th of November, 1948.

Q. What did you find the situation to be on your arrival?

A. The *Herald of the Morning* was anchored with the two anchors down in about 33 fathoms of water. The wind was force 5 Beaufort scale, and the sea I would say was about 6.

Q. Were there any other vessels on the scene?

A. Yes. The Coast Guard Cutter *Balsam* and the commercial tug *Sea Fox* were standing by.

Q. After your arrival at 0400, will you relate what was done, if anything, by the *Winona* in that

## Respondent's Exhibit F—(Continued)

(Deposition of Captain F. G. Eastman.)

succeeding watch and the next succeeding watch?

A. We stood by the Herald of the Morning to size the situation up and we communicated by radio with the tug Sea Fox and the Balsam to determine what their plans were and to decide what we should do. The Sea Fox stated that they could take the Herald of the Morning in tow but that they had no towing hawser, as they had broken their hawser, and the Balsam was also in the same position, in that their towing hawser had been parted previously. I sent a message to the [6] Coast Guard District in Seattle stating that the Herald of the Morning was in no immediate danger and stated that I could loan the Sea Fox our hawser and assist them in placing it on board, so that we could proceed to our ocean station in accordance with our original assignment.

The Seattle District said that I could loan the hawser if in my judgment it seemed to be the proper thing under the circumstances.

I called the Sea Fox by radio and told them that I would place our 12-inch hawser on the Herald of the Morning and give the other end to the Sea Fox so that they would be in a position to take her in tow.

Q. Was that done?

A. Yes. At 10:18 the Winona anchored in 33 fathoms of water ahead of the Herald of the Morning, and we shot a line to the Herald of the Morning with a line-throwing gun and passed one end of



Respondent's Exhibit F—(Continued)

(Deposition of Captain F. G. Eastman.)

our 12-inch hawser to them. Then we called the Sea Fox over and shot a line to them and passed the other end of the same hawser to the Sea Fox.

Q. When the Winona shot a line as the first step in passing her 12-inch hawser to the Herald of the Morning, what was the position of the Winona with reference to the Herald of the Morning?

A. We were anchored right ahead of them, that is with head to the sea and wind and about 50 yards between our stern [7] and the bow of the Herald of the Morning.

Q. Were you in the same position or a different position when you passed the other end of the hawser to the Sea Fox?

A. We maintained our anchored position while passing the hawser to the Sea Fox and did not move until the Sea Fox had the end secured on board.

Q. When was the operation of passing the hawser completed, approximately?

A. It was completed about noon, shortly after noon, on the 17th of November.

Q. Will you describe the conditions of weather and sea during that operation?

A. At noon the wind was force 3 west and the sea was force 4 from the west—or number 4, not force 4.

Q. In knots, will you state what force 3 wind would be or is?

A. Force 3 wind is about 28 knots an hour, I think. You don't have any nautical book here, I

## Respondent's Exhibit F—(Continued)

(Deposition of Captain F. G. Eastman.)

guess, from which I could refresh my memory. I should have brought one with me, I guess. I think that is about right, about 28 knots an hour wind.

Q. Apart from defining a force 3 wind, do you have a recollection of about the force of the wind when that operation went on? [8]

A. The wind had modulated considerably during the morning, but there was a heavy swell running from the storm which had passed.

Q. In Coast Guard usage, the sea is defined by numbers ranging from 1 to 9, is it?

A. I think it is 1 to 10. I believe the sea is 1 to 10 and the wind is 1 to 9.

Q. And the sea as described by your log as the numeral 4 would be what type of sea?

A. Those are heavy swells. I would say those swells were 30 feet between height of crest and valley.

Mr. Conger: Was this at the time the hawser passed?

Mr. Gilligan: That the hawser passed.

Q. (By Mr. Gilligan): Would you be able to describe in a general way the type of seas which would be represented by the numerals 3 down to 2 down to 1? I am trying to get just what the starting point 1 is, to move it up through 2, 3, and up to 4.

A. One is slight sea, perhaps eight feet between the crest and the valley, 2 is about 12 feet high, and



Respondent's Exhibit F—(Continued)

(Deposition of Captain F. G. Eastman.)

3 about 18 feet high.

Q. And when you say "high," Captain, you mean the distance from the trough to the height of the crest?

A. Yes.

Q. It doesn't refer to the height of the swell itself, [9] I mean from the horizontal to the top of the crest?

A. You mean from the mid point to the top?

(Discussion off the record followed.)

A. (Continuing): I could just qualify that now by saying that it is possible that a number 4 sea is more nearly 25 feet high.

Q. After the hawser had been secured between the Herald of the Morning and the Sea Fox, did the Balsam remain at the scene during the 1200-1600 watch?

A. The Balsam was released by me by radio to return survivors of the sunken tug Neptune to Astoria.

Q. What time did she leave the scene?

A. She left the scene at 1400.

Q. How long did you remain at the scene after 1400 on the 17th of November?

A. We stood by the Herald of the Morning and Sea Fox until the Balsam returned at 2245. Of course, we didn't really leave until 0310 I notice, that is, we had to get the Balsam briefed on the conditions before we left.

## Respondent's Exhibit F—(Continued)

(Deposition of Captain F. G. Eastman.)

Q. And when you spoke of 0310, that is 0310 on the 18th of November?

A. The 18th of November.

Q. From the time the towing hawser had been secured from the Sea Fox to the Herald of the Morning around 1200 on the 17th until you left at 0310 on the 18th, would you generally [10] describe what the weather conditions and sea conditions had been?

A. The weather and sea were improving gradually, until the evening of the 17th, when the wind shifted to southsoutheast and began to increase somewhat.

Q. Will you relate what the circumstances were attending your departure from the scene?

A. When we departed at 0310 on the 18th the Balsam was standing by the Sea Fox and the Herald of the Morning. The Sea Fox had the 12-inch hawser and was prepared to take the Herald of the Morning in tow. The Herald of the Morning was anchored with one anchor down. She had slipped her second anchor when we placed the hawser on the Sea Fox.

Q. Did you leave the scene on orders from the Coast Guard headquarters?

A. The Seattle District gave me authority to leave when I considered that the Balsam and the Sea Fox could handle the situation, and I considered that to be the case when we left.

Respondent's Exhibit F—(Continued)

(Deposition of Captain F. G. Eastman.)

Q. So you then proceeded on your original mission?  
A. Yes.

Mr. Gilligan: Your witness.

Cross-Examination

By Mr. Conger:

Q. You weren't there when the tug Hercules came along [11] later on, were you?  
A. No.

Q. You don't know what the conditions were after you left?

A. The Sea Fox told me by radio that there was another tug named the Hercules that was en route, and the District confirmed that fact before I left.

Q. Did that enter into your consideration of believing it to be safe to leave the Balsam and the Sea Fox with another tug coming to the assistance? Did that have something to do with the decision to leave?

A. Well, I considered the situation was adequately taken care of with the vessels at hand.

Q. At that particular time, you mean?

A. At that time, yes.

Q. When you first got your report of the District—was it called the District Office?

A. District Commander.

Q. District Commander—the weather at that time or the wind was force 9, was it not? If you look at the records——

A. We don't have that report here.

## Respondent's Exhibit F—(Continued)

(Deposition of Captain F. G. Eastman.)

Q. Is it your recollection of the time that the wind was blowing a gale, at the time you first got that request to go out to the assistance of the *Herald of the Morning*?

A. When we received the first orders to go, we were in [12] the Strait of Juan de Fuca, and the wind at that time was about force 4, and I increased the speed to 17 knots. When we arrived off the entrance to the Strait in the open sea the wind and sea had increased to such an extent that I had to slow down to 12 knots to keep from taking green seas over the bow.

I don't think the wind was ever force 9; as far as I am concerned, it wasn't. I can tell you what I think it was.

Q. Your position is it wasn't; you don't think it was as high as that?      A. No.

Q. Do you know what that message was that the *Balsam* had sent to the headquarters?

Didn't it have something to do with there was danger of the *Herald of the Morning* going aground if she continued to drift, going ashore?

As I understand it, there was some figuring in the message as to about where she might fetch up in case she continued to drift?

Do you know about that?

A. The first intimation we received that the *Herald of the Morning* was in trouble was a message

Respondent's Exhibit F—(Continued)

(Deposition of Captain F. G. Eastman.)

sent by the Balsam to Coast Guard District, Seattle, for our information. That message stated that the position of the Herald of the Morning was such that she might drag anchor. [13]

(Discussion off the record followed.)

Q. There was a definite message that was in writing that was sent that you saw at one time or was received?

A. Yes, and when I arrived on the scene I was surprised that the situation was as good as it was.

Q. As I understand it, you didn't maneuver in close with your vessel to pass this 12-inch tow line, but used the Lyle gun to shoot both ends, one end to the Herald of the Morning and the other end to the Sea Fox.

A. We maneuvered in fairly close. That is, 50 yards isn't very far in a heavy sea.

Q. The sea was then what force?

A. The sea was about force 4 and the wind around 5.

Q. This hawser you had, that was a Manila hawser, was it not?

A. A Manila hawser.

Q. Did you have any other hawser beside that Manila hawser?

A. Yes, we had an eight-inch Manila hawser and a 1 $\frac{1}{4}$ -inch wire hawser in addition.

Q. Do you know what the Sea Fox had before, what hawser? They had a wire, did they not?



## Respondent's Exhibit F—(Continued)

(Deposition of Captain F. G. Eastman.)

A. The Captain of the Sea Fox told me that they had a wire which broke.

Q. Do you know what thickness that wire was? Did you [14] see it on the vessel?

A. I thought that it was  $1\frac{1}{4}$ -inch wire similar to the wire that we had, but I am not sure.

Q. At the time that you arrived, the Balsam didn't have any more hawsers to help out with, did she?

A. No, they told me they had an eight-inch hawser which had parted and wasn't long enough for further towing.

Q. This  $1\frac{1}{2}$ -inch wire that you said you had on the Winona——

A. I don't know whether I should explain between the measure. A wire is measured in diameter.

Q. In diameter.

A. And the Manila hawser is measured in circumference and the wire is measured in diameter, so the  $1\frac{1}{4}$ -inch diameter wire is a pretty husky piece of steel wire.

Q. How long was that  $1\frac{1}{2}$ -inch wire that you had? A. I think it was about 100 fathoms.

Q. How about this Manila hawser that you shot out?

A. That twelve-inch Manila hawser, I think that was 300 fathoms.

Q. In view of the sea conditions, your wire was a little short for that job, was it not?

Respondent's Exhibit F—(Continued)

(Deposition of Captain F. G. Eastman.)

A. Yes. We do not have a towing machine, and in my estimation a Manila hawser that is long gives you a catenary which acts as a cushioning effect when towing in a seaway. [15]

Q. If you have a towing machine, then you can use your wire to better effect, as I understand it?

A. A wire is probably a suitable towing equipment with a towing machine.

(Discussion off the record followed.)

Q. I think I saw somewhere here something or other in my notes about one of these reports that said that the Herald of the Morning had two anchors down.

My information is that there was one anchor down and the second anchor was unshipped on deck and it was not down.

Would you be positive in your recollection that there were two anchors down—actually down, that is?

A. Yes, I would, because of this: When we passed the hawser to the Herald of the Morning, they had two anchors down and I tried to get the message to them by voice that they were to leave their anchors down until the Sea Fox actually had the cable or the hawser fast on board, but while we were passing the hawser to the Sea Fox the Herald of the Morning let go one of their anchor chains so that it ran out through the hawse pipe, and I

## Respondent's Exhibit F—(Continued)

(Deposition of Captain F. G. Eastman.)

distinctly remember that because it caused me considerable alarm that the Herald of the Morning might drift, and in the conditions prevailing it would have been a very embarrassing situation, since the Sea Fox did not have the hawser secured at that time.

Q. It might have been an anchor from one of the other [16] vessels that you saw two down, or it might have been an anchor chain from some other vessel besides the Herald of the Morning?

A. We. We could see the Herald of the Morning stern and the anchor, or the chain, was right there.

There is no doubt in my mind that she had two anchors.

Q. As I say, my information is that one of the anchors was unshipped, and do you definitely deny that it was unshipped rather than that it was down?

A. I don't know what the Herald of the Morning had on deck.

Sometimes they have what is called a stream anchor on deck, which is an extra anchor above the two anchors usually carried in the hawse pipes. If they had an anchor on deck, it is my opinion that that is what that was.

(Discussion off the record followed.)

A. (Continuing): Sometimes a ship will put a chain out without any anchor on it, but it certainly



Respondent's Exhibit F—(Continued)

(Deposition of Captain F. G. Eastman.)

looked to me as if there were two chains with two anchors on them from the way the ship swung back and forth in the wind and sea and took a strain on each one.

Q. Was the Herald of the Morning, at the time you came up to her on the 17th, outside the 30-fathom circle, or whatever you call it?

A. She was just beyond the 30-fathom curve, and we [17] logged our depth as 33 fathoms when alongside of her.

Q. Are you familiar with those tugs, the Hercules and the Neptune before she sank?

A. Yes. I went down and looked at the Neptune afterwards in Seattle, just as a matter of interest, to see how large a ship she was.

Q. Did they raise it?

A. Excuse me, no, I don't say the Neptune. I mean the Hercules.

Q. They can work close to these vessels a little better than your larger Winona or the Balsam, I believe, can they not?

A. Yes. Those tugs are handy ships and should be able to maneuver fairly close.

Q. That is what they were built for more or less, were they not, that kind of work?

A. Yes.

Mr. Conger: That is all.

## Respondent's Exhibit F—(Continued)

(Deposition of Captain F. G. Eastman.)

## Redirect Examination

By Mr. Gilligan:

Q. In answering one of Mr. Conger's questions which related to the wind force at the time you passed your hawser to the Herald of the Morning, I am not just sure what answer you meant to give.

Would you kindly refer to your log again and tell us what [18] the wind force was during that operation?

A. The wind at 0900 was logged as 4, and at 1000 as 3. I can answer it that way.

Q. And at eleven?

A. And at eleven, force 3.

Q. And also at noon?

A. At noon, force 3.

Q. That was during the period when the hawser was being passed?      A. Yes.

## Recross-Examination

By Mr. Conger:

Q. One other question here. I notice in this report of assistance of the Winona's that they have the nature of the casualty: "Tug's towing hawser parted." That refers to the Sea Fox, does it?

A. Yes, it does.

Q. And then underneath it says "Cause," and the answer is "Heavy seas"?      A. Yes.

Respondent's Exhibit F—(Continued)

(Deposition of Captain F. G. Eastman.)

Q. And was that the information that you received from the Balsam?

A. The Sea Fox told me by radio that their towing machine was broken down and that contributed to the breaking of their towing wire. [19]

Q. But when you made this report, was it based on what you received from the District Commander or from the Balsam's report, or was this made up afterwards?

A. We make this report up from the information that we have ourselves and that goes to the District and then to Headquarters here, and we don't have anything from anyone else necessarily except by radio exchange that we did on the scene.

Mr. Conger: That is all.

Mr. Gilligan: That is all.

(Witness excused.)

(The signature of the witness was waived by agreement between counsel.)

Mr. Gilligan: It is agreed that the exhibits offered in evidence may be retained by examining counsel, in reference to copies of record, to make copies for the Court and opposing counsel.

(The taking of the above deposition was concluded at 11:10 a.m., November 30, 1950.)

[Endorsed]: Filed January 22, 1951. [20]

## RESPONDENT'S EXHIBIT G

Deposition of Lt. Frank C. Schmitz, taken on behalf of the Waterman Steamship Corporation, at the United States Coast Guard Station, New London, Connecticut, on November 28, 1950, at 1:00 o'clock p.m., pursuant to agreement of counsel.

[Title of District Court and Causes.]

Appearances:

MESSRS. GRAHAM & MORSE,

Proctors for Waterman Steamship Corporation, by

MESSRS. KIRLIN, CAMPBELL, HICKOX  
& KEATING,

(EUGENE F. GILLIGAN, ESQ.)

MESSRS. McKEON & COLBY,

Proctors for Puget Sound Tug & Barge Company, Cary-Davis Tug & Barge Company and Shipowners & Merchants Towboat Co., Ltd., by

MESSRS. BURLINGHAM, VEEDER,

CLARK & HOPPER,

(FREDERIC CONGER, ESQ.)

MR. SEYMOUR MANHEIMER,

Notary Public of the State of Connecticut.

It Is Stipulated and Agreed by and between counsel for the respective parties that the signing, sealing, certification and filing of the within deposition

## Respondent's Exhibit G—(Continued)

are waived; it is further stipulated that all objections except as to the form of the questions are reserved to the trial; it is further stipulated that stenographer's fees are taxable subject to the practice in the district in which these suits are pending and the agreement of counsel of record; it [2\*] is further agreed that this deposition may be used in the two causes in which it is taken and accordingly the deposition is entitled in both causes; it is further agreed that the original of the deposition may be delivered to the examining counsel for transmission to counsel for Waterman Steamship Corporation.

## LT. FRANK C. SCHMITZ

called as a witness on behalf of the Waterman Steamship Corporation, being first duly sworn by the Notary Public, testified as follows:

## Direct Examination

By Mr. Gilligan:

Q. Were you commanding officer of the United States Coast Guard Cutter Balsam during November, 1948?      A. Yes.

Q. What was your rank?

A. Lieutenant, United States Coast Guard.

Q. How long had you commanded the Balsam?

A. I would say approximately six months.

Q. At that time about how long had you been commissioned as a lieutenant?

---

\*Page numbering appearing at top of page of original Certified Transcript of Record.

## Respondent's Exhibit G—(Continued)

(Deposition of Lt. Frank C. Schmitz.)

A. Since July, 1944.

Q. At that time how much sea experience had you had?

A. You mean actually at sea or duties connected with the sea?

Q. Duties connected with the sea.

A. I would [3] say ten years.

Q. Would you give a description of the Cutter Balsam in respect of her general dimensions or motive power?

A. She is a 180 foot Coast Guard Tender Class Cutter; her beam, I believe, was 36 feet; her motive power was Diesel electric, single screw, a 9 foot 6 inch propeller, fitted with towing bitts and towing rail on her fantail.

Q. On November 14, 1948, where was the Balsam stationed?

A. At Pier 3, port docks, Astoria, Oregon.

Q. On that date did she leave Astoria to proceed to sea to render assistance to a vessel at sea?

A. Yes.

Q. To what vessel did you proceed?

A. The Tug Sea Fox with the C-2 hull, Herald of the Morning in tow.

Q. Would you kindly state the time of your departure and the time and position of your arrival at the site where those vessels were?

A. We departed Astoria en route to the assistance of the aforementioned vessels at 1715, 14 No-



Respondent's Exhibit G—(Continued)

(Deposition of Lt. Frank C. Schmitz.)

vember, 1948, and we arrived in their vicinity at 2030 that evening.

Q. What was the approximate position at which you found the vessels?

A. Seventeen miles bearing 230 degrees true from Columbia River Light Ship.

Q. Had you been informed what the occasion was for [4] request for your assistance?

A. I had.

Q. What was that advice?

A. That the Tug Sea Fox with the Herald of the Morning in tow had her towing engine disabled.

Q. On arrival at the scene did you speak either vessel?

A. I did.

Q. Which one or was it both?

A. We first spoke the Tug Sea Fox by radio-telephone; following that we went close alongside the Herald of the Morning and spoke to her crew by megaphone.

Q. And generally, what was the situation in which those vessels were as you observed it or as it was told you either by the Sea Fox or the crew of the Herald of the Morning?

A. The Sea Fox's towing engine was disabled; the tow line had been re-secured to the Sea Fox's towing bitts. However, this was a poor arrangement and wasn't expected to last for long.

Q. At what approximate time did your assistance

## Respondent's Exhibit G—(Continued)

(Deposition of Lt. Frank C. Schmitz.)

to the Herald of the Morning and the Sea Fox terminate?

A. At 1005, 19 November, 1948.

Q. In what approximate location were the vessels then?

A. In the Straits of Juan de Fuca off Port Angeles, Washington.

Q. I show you ten photostatic sheets and I ask you if you can identify them? A. I can. [5]

Q. And what are they?

A. They are the log of the Coast Guard Cutter Balsam for the period 14 November through 19 November.

Q. And do these log sheets contain watch by watch entries made in regular course over those dates? A. They do.

Q. Do those log sheets bear your signature?

A. They do.

Mr. Gilligan: I offer the log sheets identified by the witness in evidence.

Mr. Conger: I should object to their introduction at this time. While they bear his signature it does not appear that those were all made by him.

Mr. Gilligan: I suggest that they be marked "Exhibit Balsam A-1 through A-10."

(The log sheets above referred to were marked Exhibit Balsam A-1 through A-10, November 28, 1950, I. H. S.)



Respondent's Exhibit G—(Continued)

(Deposition of Lt. Frank C. Schmitz.)

Mr. Gilligan: I understand it is agreeable that I may retain the log sheets of the *Balsam* offered in evidence for transmission to the proctors of record for Waterman Steamship Corporation for the purpose of making additional copies to be supplied the court and counsel for the salvors.

Q. After the rendition of assistance to the [6] vessels in distress, is there any practice in the Coast Guard concerning the formulating of reports concerning those activities?

A. Yes; it is required that a report of assistance be made and forwarded to the commandant via the chain of command.

Q. I show you two sets of documents, each headed "Report of Assistance," one bearing the serial number 13-49 and the other, serial number 14-49 and I ask you if you can identify those documents? A. I can.

Q. And what are they, please?

A. The CGC *Balsam*'s reports of assistance involving the Tug *Neptune* and the Tug *Sea Fox* and the *Herald of the Morning*.

Q. Who prepared the reports? I mean in the sense of authorship?

A. Lieutenant Jg. J. E. Murray, navigator of the Coast Guard Cutter *Balsam*.

Q. Who signed them?

A. Lt. Murray and myself.

## Respondent's Exhibit G—(Continued)

(Deposition of Lt. Frank C. Schmitz.)

Q. What did you intend your signature on the reports to signify?

A. The correctness and completeness of the facts reported therein.

Mr. Gilligan: I offer those reports in evidence and request that they be marked respectively Exhibits Balsam B, and C.

Mr. Conger: Same objection as in the case of the logs.

(Reports of assistance above referred to were [7] marked respectively Exhibits Balsam B and C, November 28, 1950, I. H. S.)

Q. There came a time later in your attendance at the scene when the situation as it was when you arrived changed and I refer to the time that the towing line between the Sea Fox and the Herald of the Morning parted.

Will you state when that occurred?

A. The tow line parted at 0040, 16 November.

Q. Up to that time, from the time of your arrival, will you state whether or not any progress had been made in the towage of the Herald of the Morning or just what the situation might have been?

A. At the time we arrived at the scene of the two ships the towing engine had become disabled and the towing cable had been re-secured to the towing bitts. The Tug Sea Fox was endeavoring to head into the sea and wasn't attempting to make

## Respondent's Exhibit G—(Continued)

(Deposition of Lt. Frank C. Schmitz.)

any progress up the coast. As I recall, she was steering generally a southwesterly course into the weather, sea and wind.

Q. From the time of your arrival until the parting of the towing line of the Sea Fox, would you give a brief resume, in a general way of the weather conditions as to wind and state of the sea?

A. Well, the weather was cloudy and overcast with occasional rain; the wind and sea was from the southwest, occasionally bearing to [8] the west and to the east of south; the wind at the time of arrival on the scene was force 5 Beaufort. From that time until the tow parted the wind varied from force 5 to force 7 to force 10. The sea during the same time varied between condition 6 and condition 4.

Q. What hours on what date would you say the sea and wind were at their greatest intensity?

A. During the first eight hours of the 16th of November.

Q. And how did the wind and sea conditions compare at the time the towing line parted or for several hours prior thereto with that period you have mentioned as the first eight hours of the 16th of November?

A. Well, the wind increased approximately double in intensity. The condition of the sea increased one point on the Beaufort scale.

Q. Did another craft arrive prior to the parting of the tow line to the Sea Fox?      A. Yes.

## Respondent's Exhibit G—(Continued)

(Deposition of Lt. Frank C. Schmitz.)

Q. What craft was that?

A. The Tug Neptune.

Q. And when did she arrive on the scene?

A. At 2005, 15 November.

Q. After the parting of the Sea Fox tow line, were there any efforts on the part of any of the vessels present directed towards securing another tow line before daybreak?

A. The Neptune, after its arrival on the scene, endeavored to pass her tow line to the Herald of [9] the Morning. However, the state of the weather prevented her from accomplishing the operation.

Q. What was the situation until daybreak with reference to the Herald of the Morning so far as her being a free agent or being secured?

A. She was completely free of all tow lines and was drifting before the wind and sea in a northerly direction.

Q. After daybreak on the 16th, what, if any, efforts were made with respect to getting a line on the Herald of the Morning and with what result?

A. At daybreak the Neptune——

Mr. Conger (Interposing): This is daybreak of the 16th?

The Witness: The 16th, yes.

The Neptune made another attempt to put her tow line on the Herald of the Morning.

Q. And what was the result of that endeavor or what occurred if you observed it?

Respondent's Exhibit G—(Continued)

(Deposition of Lt. Frank C. Schmitz.)

A. The Tug Neptune, in maneuvering close quarters in the vicinity of the bow of the Herald of the Morning collided on her starboard quarter with the bow of the Herald of the Morning resulting in the Neptune having her starboard fuel tank and tank top punctured by the bow of the Herald of the Morning.

Q. Were you advised of the situation of the Neptune and if so, what thereafter occurred in connection with the [10] Neptune?

A. We were informed of the casualty and shortly after being informed of the casualty our collision mat was requested of us by the Neptune. We then endeavored to pass our collision mat to the Neptune. By 1005 that same day the collision mat had been passed to the Neptune, but, at that time, due to the state of the weather and the condition of the Neptune and its crew, they were unable to use it.

Q. What eventually happened to the Neptune and what participation in the matter did the Balsam take?

A. At approximately 1055 at 16 November, the master of the Neptune informed us that he intended to abandon ship. As this information had been anticipated by the Balsam, rescue operations commenced immediately. The Balsam approached the Neptune; by heaving line passed a messenger to the Neptune; the Neptune crew, then, by heaving in on



## Respondent's Exhibit G—(Continued)

(Deposition of Lt. Frank C. Schmitz.)

the messenger, were able to haul a rubber life raft from the Balsam to the Neptune, and, by means of this arrangement the Balsam was able to remove the entire crew of the Tug Neptune.

Q. In the meantime, what was the situation with respect to the Herald of the Morning? Had it changed any or was it the same?

A. The Herald of the Morning, during the foregoing events had continued to drift in a northeasterly direction. [11]

Q. After the Balsam's rescue of the Neptune's crew, will you state whether or not she proceeded to or near the Herald of the Morning?

A. Following our rescue of the crew of the Neptune, the Balsam requested the Tug Sea Fox to stand by the Neptune until it sank. The Balsam then proceeded to the position of the Herald of the Morning.

Q. On arrival in the vicinity of the Herald of the Morning, did you have any communication with her crew then or later in the course of the day?

A. Throughout the day we communicated to them by megaphone.

Q. Did you have any plans for the Herald of the Morning which you conveyed to them or which you intended to execute yourself?

A. In the course of deciding what would be best to do to assist the Herald of the Morning, it was reported to the Balsam by the Herald of the Morn-



## Respondent's Exhibit G—(Continued)

(Deposition of Lt. Frank C. Schmitz.)

ing that they had no anchor available. Inasmuch as this was the case the Balsam immediately commenced preparing to take the Herald of the Morning in tow using the Balsam's ten-inch towing hawser.

Q. Will you state whether or not efforts to that end were successful?

A. The line was passed to the Herald of the Morning, secured, and the Balsam proceeded to take the Herald of the Morning in tow, but, due to [12] length of the towing hawser and its size, the hawser parted very shortly after the towing operation commenced and no new efforts were made to renew the towing hawser on the Herald of the Morning.

Q. Later on that day was anything undertaken or done by the Herald of the Morning with respect to her situation and her being a drifting vessel?

A. After our towing hawser parted we again went alongside the Herald of the Morning to determine what means of saving themselves the crew of the Herald of the Morning had available. It was then found that the Herald of the Morning had an anchor available. Following receipt of this information, the Balsam advised the Herald of the Morning that we would track them and let them know when they had reached 30 fathoms of water and at that time they could let their anchor go.

Q. What was the sequel to that advice, and what, if anything, did the Herald of the Morning do?

## Respondent's Exhibit G—(Continued)

(Deposition of Lt. Frank C. Schmitz.)

A. At 1915 that same day, November 16th, the Herald of the Morning dropped her port anchor. She was then anchored in 37 fathoms of water to 135 fathoms of port anchor chain.

Q. What was her anchored position?

A. The Herald of the Morning anchored in position 46 degrees, 42.5 north, 124 degrees, 19 minutes west. [13]

Q. Did you observe how she lay to her anchor?

A. She lay heading into the sea and wind.

Q. Was the Sea Fox in the vicinity after the Neptune had sunk and by the time the Herald of the Morning had anchored?

A. The Sea Fox had arrived in our vicinity at 1710 that day after reporting the sinking of the Neptune at 1632.

Q. What was the next craft which arrived in the vicinity of the anchored Herald of the Morning?

A. At 0440 the following day, 17 November, the Coast Guard Cutter Winona arrived from Port Angeles, Washington, to assist as required.

Q. On that morning on the 17th, after the arrival of the Winona, what was the first activity undertaken by any of the attending craft?

A. After arriving in the vicinity of the Herald of the Morning and following the arrival of daylight the Winona anchored in the vicinity of the Herald of the Morning and passed a 12-inch hawser to the Herald of the Morning. Following comple-

Respondent's Exhibit G—(Continued)

(Deposition of Lt. Frank C. Schmitz.)

tion of passing one end of this hawser to the Herald of the Morning she then passed the bitter end of the same tow line to the Tug Sea Fox.

Q. That is, the Winona passed the bitter end of the 12-inch line to the Sea Fox?

A. That is right. This operation was completed by 1145 that day. [14]

Q. When that operation was undertaken and performed by the Winona, what were the conditions of wind and sea?

A. The wind was force 3 from the northwest and the sea was condition 2 from the west.

Q. Will you state whether or not the Herald of the Morning remained at anchor the rest of that day?

A. She did remain at anchor the rest of that day.

Q. And throughout that day she was secured by this line furnished by the Winona to the Sea Fox?

A. That is correct.

Q. We come then to the 18th and was there another craft which arrived on the scene that morning?

A. At 0300 the 18th of November the Tug Hercules arrived on the scene.

Q. What, if anything, did she undertake to do after her arrival?

A. At 0830 the Hercules passed her towing hawser to the Herald of the Morning.

## Respondent's Exhibit G—(Continued)

(Deposition of Lt. Frank C. Schmitz.)

Q. Will you describe the weather conditions as to wind and sea at the time that operation was commenced and completed and during it?

A. During that time the wind was southeast, force 4, sea condition 2 and seas coming from the southwest.

Q. As a seaman, how would you generally characterize the general weather condition then as compared to what it had been?

A. Compared to what it had been the sea [15] and wind was very moderate.

Q. How would you characterize the operation of the Hercules in passing her towing hawser to the Herald of the Morning that morning with respect to the difficulties of the operation under the conditions prevailing?

Mr. Conger: I object. I think the witness should describe what actually took place.

The Witness: I am not qualified to testify as an expert witness in what I think would involve expert testimony. It would also require an opinion from me which I am not authorized to give.

Q. How would you compare the weather conditions prevailing at the time the Hercules passed her hawser to the Herald of the Morning with those prevailing when the Winona passed her hawser to the Herald of the Morning on the preceding morning?

A. About the same.

Q. Will you describe what transpired in this

## Respondent's Exhibit G—(Continued)

(Deposition of Lt. Frank C. Schmitz.)

situation after the Hercules and the Sea Fox were both secured to the Herald of the Morning?

A. After each of the two tugs had their towing lines secured to the Herald of the Morning the wind caused them to swing around with the wind and in the same direction as the Herald of the Morning was lying, in the same line but opposite direction to the direction the Herald of the Morning was lying. From this position they could not come around to a towing [16] position ahead of the Herald of the Morning due to the fact that the strain on their tow lines prevented effective action of their rudder so they were more or less in irons, unable to move to the right or to the left and due to their position were increasing the strain on the Herald of the Morning's anchor cable.

Q. Did the fact that the Herald of the Morning's anchor was down have any bearing on that situation?

A. Yes. Normally if a vessel is taken in tow, she can be turned and regardless of how the tug lies she will eventually straighten out astern of the towing vessel, but, in the case as the tugs found themselves as described in the foregoing testimony, they were unable to move the Herald of the Morning. As a result, they found themselves in irons.

Q. What was done with reference to the anchor of the Herald of the Morning?

A. After both tow lines had been secured to the



## Respondent's Exhibit G—(Continued)

(Deposition of Lt. Frank C. Schmitz.)

Herald of the Morning and due to the fact that the Herald of the Morning had no power with which to raise her anchor, an attempt was made by the Herald of the Morning to slip her anchor. Due to the great strain which was then on the anchor cable it wasn't possible to do this.

Q. What was done to remedy the situation or clear it up?

A. The Balsam, seeing the condition that [17] the tugs and tow were in, offered the Herald of the Morning the use of her portable acetylene cutting outfit. Following the transfer of this outfit to the Herald of the Morning, the Herald of the Morning was able to cut her anchor cable and thus unmoor.

Q. How was the transfer of the burning equipment effected and by whom?

A. The portable cutting equipment was passed to the Herald of the Morning by the Balsam by use of heaving line and messenger.

Q. So when the Herald of the Morning was unmoored she was taken in tow by the Sea Fox and the Hercules and proceeded in tow?

A. That is correct.

Q. And what time was that commenced?

A. The Herald of the Morning slipped her anchor cable at 1009 the 18th of November.

Q. And you have given us the time and date of the 19th when you departed from the tow in the Straits of Juan de Fuca?      A. Yes.



Respondent's Exhibit G—(Continued)

(Deposition of Lt. Frank C. Schmitz.)

Q. From the time of the commencement of the tow until you departed you had proceeded northward with the tow in their company?

A. After the tugs had gotten the *Herald of the Morning* in tow, they proceeded in a northerly direction up the coast and the *Balsam* took station on the *Herald of the Morning's* starboard quarter and maintained this position until the foregoing mentioned position was [18] reached.

Q. Will you please state at what time the *Winona* left the scene?

A. The *Winona* left the scene of the *Herald of the Morning* at 0330, 18 November.

Q. There was a time, was there not, before the unmooring of the *Herald of the Morning* when you left the *Herald of the Morning* to proceed to Astoria with the rescued crew members of the *Neptune* and then returned?

Will you state at what time you left the *Herald of the Morning* and finally returned before her unmooring?

A. We departed the *Herald of the Morning* at 1350, 17 November, proceeded to Astoria to discharge the survivors of the Tug *Neptune*. We arrived back at the scene of the *Herald of the Morning* at 2312 the same day.

Q. What is your present duty, Lieutenant?

A. My present duty is assistant director of the Coast Guard Institute, Groton, Connecticut.

## Respondent's Exhibit G—(Continued)

(Deposition of Lt. Frank C. Schmitz.)

Q. Your place of residence is what?

A. 21 Nameaug Avenue, New London, Connecticut.

Mr. Gilligan: Your witness.

## Cross-Examination

By Mr. Conger:

Q. At the time you first arrived on the scene when the Sea Fox still had a tow line to the Herald of the Morning, the weather conditions were quite bad at that [19] time, were they not, or did that develop shortly afterwards?

A. Well, it did get worse, if that is what you mean.

Q. As I understand it, when you arrived on November 14th the force of the wind, Beaufort Scale was 5 to 6?

A. That is correct.

Q. And then on the next day, November 15th, it varied somewhat going from force 7 to 3 and then from 10:00 p.m. to 12 midnight it increased to force 8 to 9?

A. That is correct.

Q. As I understand it also continued a strong force wind on the 16th on the early morning and it was force 10 from 1:00 a.m. to 7:00 except for the hours 4:00 a.m. when it was force 9?

A. That is correct.

Q. As I understand it from my notes, the towing cable that the Sea Fox had to the Herald of the Morning parted at 0040, November 16th?

A. That is correct.

Respondent's Exhibit G—(Continued)

(Deposition of Lt. Frank C. Schmitz.)

Q. And that was when it was force 10, is that right?

A. That is correct.

Q. When you first got there you were standing by the vessel. Did you expect that the towing line the Sea Fox had would hold as the wind and weather conditions increased?

A. When we first arrived on the scene we endeavored to take the Herald of the Morning in tow. However, due to the very bad sea conditions and the fact [20] that the towing cable from the Herald of the Morning was an additional hazard to any attempt that we could make to accomplish this, we decided that the safest thing to do would be to let things ride and then if the cable parted to take the Herald of the Morning in tow.

Q. Now, at that time you were preparing to take the Herald of the Morning in tow in case the hawser of the Sea Fox couldn't handle it?

A. When we first got there we made a pass at her along her starboard bow and endeavored to pass a messenger to the Herald of the Morning. However, due to the sea conditions and the hazard of the towing cable leading out from the bow of the Herald of the Morning, the attempt was at that time abandoned.

Q. At that time you had no criticism of the Sea Fox for keeping her on to her tow? Was it better for her to hold on to it or let go the hawser, in your opinion, at that time?

## Respondent's Exhibit G—(Continued)

(Deposition of Lt. Frank C. Schmitz.)

A. It is not a question for opinion; facts within my knowledge is all I am authorized to testify to.

Q. The hawser finally did part, however, at the height of the weather conditions and the sea and when the force of the wind was at its highest at 0040, November 16th? A. That is correct.

Q. Several days later you attempted to put, and in fact you did put a 10-inch hawser, connected up with the Herald of the Morning and towed it for a short time until [21] it parted.

Was that a manila hawser? A. Yes.

Q. And after it parted you were not equipped then to try any further towing arrangements by yourself, as I understand it? After that hawser parted you were not in a position to take her in tow yourself?

A. The attempt that was made and was unsuccessful to take the Herald of the Morning was made, knowing in advance that your chances for success were very slim, so that when the line parted, as expected, no further attempt was made.

Q. Well, the equipment that the commercial tugs had for towing was probably better than the manila hawsers that you were equipped with, would you say? A. Yes.

Q. In other words, if you had the Sea Fox there in good condition or the Neptune there in good condition, you would prefer that they took over the

Respondent's Exhibit G—(Continued)

(Deposition of Lt. Frank C. Schmitz.)

tow rather than your vessel, the Balsam, if you were in charge of the operation? A. Yes.

Q. When the Neptune was thrown against the bow of the Herald of the Morning, did you see that actually happen? Did you see her when she struck the bow or were you at that moment not watching her?

A. At the time mentioned the Neptune was maneuvering in very close to the bow and frequently was obscured by the bow or portions of the Neptune were frequently obscured by the Herald of [22] the Morning. Due to the position of the Balsam it was impossible to tell whether a collision had occurred or not.

Q. Do you know who the master of the Neptune was?

A. The master of the Tug Neptune was Kelley Sprague.

Q. I understand that after you had gotten the Neptune's crew all aboard your craft, at that time the Herald of the Morning was adrift and you didn't know what might happen to her, so, you sent a message to your station ashore about the situation?

A. After we took all the crew aboard, yes, we did send a dispatch.

Q. And you sent a dispatch to your station ashore? A. To your command.

Q. To Astoria?



## Respondent's Exhibit G—(Continued)

(Deposition of Lt. Frank C. Schmitz.)

A. No. The message was directed to the commanding officer of my ship. The commanding officer of the 13th Coast Guard District.

Q. And in that message, as I understand it, you said that there was some danger of the *Herald of the Morning* going ashore and to take steps to do what they could, unless my information is wrong, but, you did send some message, I understand from what you say?

A. From my recollection, as I recall it, we sent a number of dispatches. One of the two that you probably refer to involved reporting the successful completion of the rescue operation of the crew of the *Tug Neptune*. [23]

The other, I believe, concerned the present status of the *Herald of the Morning* and the possibilities of her being lost.

Mr. Conger: That is all. Thank you very much.

Mr. Gilligan: Thank you very much, Lieutenant, that is all.

[Endorsed]: Filed January 22, 1951. [24]



[Endorsed]: No. 13135. United States Court of Appeals for the Ninth Circuit. Waterman Steamship Corporation, a Corporation, Appellant, vs. Shipowners & Merchants Towboat Co., Ltd., a Corporation, and Tug Sea Fox, Inc., a Corporation, on their own behalf and on behalf of the Master, Officers and Crew of the Tug Sea Fox, Appellees. Apostles on Appeal. Appeal from the United States District Court for the Northern District of California, Southern Division.

Filed October 17, 1951.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for  
the Ninth Circuit.

